

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRANDON THORNTON,

Petitioner,

v.

24-CV-6697-MAV
ORDER

J. WOLCOTT,

Respondent.

INTRODUCTION

Pro se Petitioner, Brandon Thornton, is a prisoner incarcerated at the Attica Correctional Facility. Petitioner has filed a Petition for a writ of habeas corpus under 28 U.S.C. § 2254, ECF No. 1, but he did not pay the filing fee. Petitioner did submit a financial affidavit in application to proceed *in forma pauperis*. ECF No. 2. But his request is incomplete because he did not include the required certification of his inmate trust fund account.

DISCUSSION

The filing fee for a petition for a writ of habeas corpus is \$5.00. 28 U.S.C. § 1914(a). Whenever a prisoner submits a petition for a writ of habeas corpus, the prisoner must either (1) pay the filing fee or (2) seek leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(a)(1); Rule 3(a) of the Rules Governing Section 2254 Cases. The *in forma pauperis* motion must include an affidavit or affirmation establishing that the petitioner is unable to pay the fees and costs for the proceedings. It also must include a prison certification section, completed and signed by an

authorized officer of the institution in which the prisoner is incarcerated, certifying both the amount presently on deposit in the prisoner's inmate trust account and the prisoner's average account balance during the last six months.¹ 28 U.S.C. § 1915(a)(1)-(2); Rule 3(a)(2) of the Rules Governing Section 2254 Cases.

Here, Petitioner did not pay the \$5.00 filing fee or submit a motion to proceed *in forma pauperis* that includes a prison certification of Petitioner's inmate trust fund account. 28 U.S.C. § 1915(a)(1)-(2).

CONCLUSION

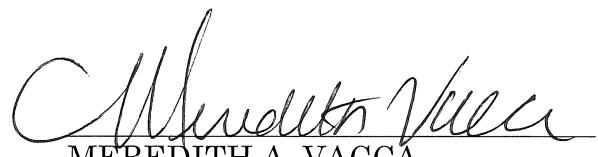
For the reasons set forth above, the Clerk of Court shall administratively terminate the Petition without filing it or assessing a filing fee. Petitioner is granted leave to reopen this case, no later than **30 days from entry of this Order**, by submitting either (1) the \$5.00 filing fee or (2) a completed and signed prison certification section.² The Clerk of Court is directed to send an *in forma pauperis* motion form to Petitioner. Upon Petitioner's submission within 30 days of either (1) the \$5.00 filing fee or (2) a completed prison certification, the Clerk of Court shall reopen this case without further order.

¹ The Court has ordered that a form motion to proceed *in forma pauperis* with certification section be mailed to the Petitioner. The form also is available at <http://www.nywd.uscourts.gov/pro-se-forms>.

² Such an administrative termination is not a "dismissal" for purposes of the statute of limitations, and if the case is re-opened under the terms of this order, it is not subject to the statute of limitations time bar if it was originally filed timely. See *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner mailbox rule); *McDowell v. Del. State Police*, 88 F.3d 188, 191 (3d Cir. 1996); see also *Williams-Guice v. Bd. of Educ.*, 45 F.3d 161, 163 (7th Cir. 1995).

SO ORDERED.

Dated: December 5, 2024
Rochester, New York



MEREDITH A. VACCA
UNITED STATES DISTRICT JUDGE